

REMARKS

Claims 2-18, 20-32, 34 and 35 are currently pending in the subject application and are presently under consideration.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 2-3, 7-8, 18 Under 35 U.S.C. §102(e)

Claims 2-3, 7-8, 18 stand rejected under 35 U.S.C. §102(e) as being anticipated by Paatelma (US 6,463,042). Withdrawal of this rejection is respectfully requested for at least the following reasons. Paatelma does not teach or suggest each and every element of the subject claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “*each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Foremost, applicant’s representative respectfully asks the Examiner to carefully consider the arguments set forth *infra*, paying special attention to the following features recited in independent claim 2: “the communication unit transmits *the first portion of the data packet at a first data rate and the second portion of the data packet at a second data rate.*”

Paatelma is utterly void of any teaching or suggestion relating to data rates. Rather, Paatelma discusses power levels, but discloses nothing regarding data rates. However, in over three years of prosecution, despite being underscored in numerous communications, the Examiner has yet to address these features of the subject claims. Instead, the Examiner has repeatedly set forth the identical argument that Paatelma teaches transmitting portions of a data packet at different *power levels*, while (for over three years) tacitly ignoring the claimed features relating to *data rates*. Paatelma does not teach the communication unit transmits *the first portion of the data packet at a first*

data rate and the second portion of the data packet at a second data rate, nor does the Examiner argue to the contrary, which is a *de facto* demonstration that Paatelma is materially deficient to anticipate the subject claims.

Pointedly, applicant does not dispute that Paatelma teaches, “the Header portion of the slot is transmitted at normal power while the remainder of the slot is transmitted at a reduced power level relative to the Header portion” (*see* Paatelma, col. 4, ll. 63-65). Rather, applicant’s representatives has continually pointed out that these (or any other) portions of Paatelma do not teach or suggest *the first portion of the data packet at a first data rate and the second portion of the data packet at a second data rate*. Therefore, it is requested that the Examiner cite portions of Paatelma that disclose transmitting portions of a data packet at different *data rates* as articulated in the subject claims or withdraw this rejection forthwith.

II. Rejection of Claims 9-17 and 32 Under 35 U.S.C. §103(a)

Claims 9-17 and 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Paatelma (US 6,463,042) in view of Fisher, *et al.* (US 5,768,695, hereinafter referred to as “Fisher”). This rejection should be withdrawn for at least the following reasons. Neither Paatelma nor Fisher, either alone or when combined, teach or suggest all the claimed features.

In particular, claims 9-17 depend either directly or indirectly from independent claim 2, which is believed to be allowable over Paatelma. The addition of Fisher, which relates to a user-programmable device for configuring of ramp-up and ramp-down control signals for a radio based upon certain timing sequences (*see* Abstract), does not cure the deficiencies extant in Paatelma with respect to independent claim 2. Accordingly, this rejection of dependent claims 9-17 should be withdrawn.

Regarding independent claim 32, the claim recites, “means for determining the transmission power levels of the first and second portion *based on a desired transmission range for both the first and second portion*”, which is neither taught nor suggested by Paatelma, Fisher, or any suitable combination thereof. At page 9 of the Office Action, the Examiner argues “Paatelma inherently teaches the processor evaluating a range from the transmission”, citing column 2, lines 36-45. Applicant’s

representative rejects this contention, as Paatelma neither expressly nor inherently teaches evaluating suitable transmission ranges. At the portions of the reference indicated, Paatelma simply notes that the header portion is transmitted at a higher power level than the data portion *when the data portion contains invalid data* (e.g., so the receiver can save power by ignoring the invalid data). Moreover, even if Paatelma did inherently teach evaluating suitable transmission ranges, there is nothing to suggest the reference employs the desired transmission range for determining the transmission power levels.

Furthermore, Paatelma provides for a data portion that has a *lower* power level and therefore a *smaller* transmission range, whereas transmission range difficulties occur because the transmission range of the data portion is smaller than the transmission range of the header portion because header portions are typically transmitted at a lower data rate. Thus, as applied to the claimed subject matter, the method of Paatelma further compounds this difficulty in that the data portion of a packet will have a smaller transmission range not only due to a higher data rate but also because Paatelma *reduces* the power level. For at least this reason, it is readily apparent that transmission range is neither contemplated by nor a concern of Paatelma, and thus cannot be an inherent feature as the Examiner suggests. Rather, Paatelma's method expressly teaches away from the argument of inherency with respect to the Examiner's analysis (e.g., the Examiner argues Paatelma inherently considers transmission ranges, yet for this argument to be germane, Paatelma would have to at least teach that the power level for the data portion is increased, not decreased as disclosed). Fisher does not remedy these shortcomings. Accordingly, this rejection should be withdrawn.

III. Allowable Subject Matter

Applicant kindly thanks the Examiner for acknowledging that claims 20-31 are allowable, as well as the indication that claims 4-6, 34, and 35 would be allowable if cast in independent form. Based upon the comments *supra*, it is believed that all claims are in condition for allowance, thus, claims 4-6, 34, and 35 are not presently being recast in independent form, however, applicant reserves the right to do so at a later time.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[TELNP200US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,
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